

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

UNITED STATES OFFICE OF PERSONNEL
MANAGEMENT,

Defendant.

COMPLAINT

Plaintiff THE NEW YORK TIMES COMPANY (“The Times”), by and through its undersigned attorneys, alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from the United States Office of Personnel Management (“OPM”) in response to a request properly made by Plaintiff.

PARTIES

2. Plaintiff, The New York Times Company, publishes *The New York Times* newspaper and www.nytimes.com. The Times is headquartered in this judicial district at 620 Eighth Avenue, New York, NY, 10018.

3. Defendant, the United States Office of Personnel Management, is an agency within the federal government that has possession and control of the records that Plaintiff seeks.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is premised on Plaintiff's place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

6. FOIA requires agencies make a determination as to FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i).

7. To meet this requirement, the agency must produce the requested records or notify the requester of the statutory basis for withholding them. *See id.*; *id.* § 552(a)(6)(C)(i).

8. Defendant has failed to meet the statutory deadlines set by FOIA. The Times is therefore deemed to have exhausted all administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

BACKGROUND

OPM's EHRI Data Warehouse

9. OPM "serves as the chief human resources agency and personnel policy manager for the Federal Government." *About Us*, U.S. Off. of Personnel Mgmt., <https://www.opm.gov/about-us/> (last visited May 19, 2025). It is responsible for, among other things, collecting and maintaining human resources, payroll, and training data from nearly every federal agency. *Enterprise Human Resources Integration Guide to Human Resources Reporting: Update 4-4*, U.S. Off. of Personnel Mgmt. (Feb. 2021), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/data-policy-guidance/hr-reporting/ghrr4-4.pdf>.

10. To carry out this task, OPM operates the Enterprise Human Resources Integration ("EHRI") Program Data Warehouse. The EHRI Data Warehouse "collects, integrates, and publishes data for 2.0 million Executive Branch employees on a bi-weekly basis." *Id.* Each federal agency, not OPM, is responsible for collecting workforce data; editing that data for validity, accuracy, and completeness; and submitting it to EHRI on a timely basis. *Id.*

11. The EHRI Data Warehouse contains two types of contain submitted by agencies: (1) “status” data, which OPM defines as “[a] record of each employee’s personnel data as of the ending date of a calendar month” and which covers “all active employees (whether in a pay or non-pay status) on the agency rolls as of the end of the period”; and (2) “dynamics” data, which comprises the “personnel actions that have been processed for the employees during a bi-weekly reporting period.” *Id.*

12. OPM deems much of the workforce data it collects in the EHRI Data Warehouse to be public information. This includes most present and former federal employees’ names, job titles, grade levels, position descriptions, duty stations, and salaries. *See* 5 C.F.R. § 293.311(a); *The U.S. Office of Personnel Management Public Data Release Policy*, Off. of Personnel Mgmt. (Dec. 2024), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/data-policy-guidance/data-standards/data-release-policy-august-2020.pdf>. Indeed, OPM publishes both status and dynamics data from EHRI on a quarterly basis through a similar, but distinct, data set called the Enterprise Human Resources Integration-Statistical Data Mart (“EHRI-SDM”). *See About Our Data (EHRI-SDM)*, Off. of Personnel Mgmt., https://www.fedscope.opm.gov/datadefn/aehti_sdm.asp (last visited May 19, 2025).

13. However, publication of EHRI-SDM data is delayed by many months. The latest EHRI-SDM status data published by OPM is from September 2024, while the latest EHRI-SDM dynamics data is even older—from March 2024. *See FedScope: Federal Workforce Data*, Off. of Personnel Mgmt., <https://www.fedscope.opm.gov> (last visited May 19, 2025).

14. Because the latest EHRI-SDM data is so outdated, it cannot shed light on the extent and nature of the current administration’s drastic and unprecedented efforts, starting in January 2025, to reduce the size of the federal workforce. *See, e.g.,* Chris Cameron, *Trump*

Administration Escalates Layoffs of Federal Workers, N.Y. Times (Feb. 26, 2025), <https://www.nytimes.com/2025/02/26/us/politics/trump-doge-federal-worker-layoffs-memo.html>; Eileen Sullivan, *Federal Work Force Prepares for Another Round of Mass Firings as Deadline Nears*, N.Y. Times (Apr. 14, 2025), <https://www.nytimes.com/2025/04/14/us/politics/federal-workers-layoff-doge-trump.html>.

The Times's FOIA Request

15. On March 7, 2025, The Times emailed a FOIA request (the "Request") to OPM for up-to-date data, primarily from the EHRI Data Warehouse, that would reflect the recent federal layoffs. Specifically, the Request sought:

- All monthly employee status data for all federal government employees maintained in the Enterprise Human Resources Integration (EHRI) Data Warehouse for the months beginning December 2024 through the most recent month available at the time this request is fulfilled.
 - Please note that this is not a request for the quarterly EHRI-SDM data files, and should be processed separately from any such request from The New York Times.
 - We request that the EHRI Data Warehouse records provided include all data elements available in the EHRI-SDM extracts that OPM publishes online, including status and dynamics files. In addition, please include employee names (understanding that some names may be redacted per OPM and individual-agency policy), agency names, detailed duty stations, and position titles.
- All EHRI Data Warehouse dynamics data reflecting all federal government personnel actions since December 2024.
 - We request that these records include personnel action types at the most detailed level maintained by the agency, including status markers for types of separations. These records should include but are not limited to employee names, agency names, detailed duty stations, dates of hire and departure, and position titles.
- Any list of probationary federal employees as of January 2025 if contained separately from the EHRI Data Warehouse data.
- OPM's latest "207 report" (a report containing information on the employment status of government employees).

16. Having received no response, The Times emailed OPM on March 27, 2025, and again on April 7, 2025, to ask whether the Request had been received.

17. Later on April 7, OPM's FOIA manager replied, writing that "[t]he March 7th request was received in the FOIA inbox but has not been logged. Since February 28th, we have an auto-reply message from the FOIA@opm.gov box asking requesters to submit requests online. We are no longer accepting requests submitted via email."

18. The Times responded on the same day, explaining that it had not received any such auto-reply and asking OPM to confirm that the Request was being processed.

19. OPM's FOIA manager confirmed that the Request was being processed as of April 7, writing, "I will go ahead and log and acknowledge it today as we have not been logging requests submitted via email since we switched to online."

20. To date, The Times has not received a determination on the Request.

CAUSE OF ACTION (5 U.S.C. § 552)

21. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

22. Defendant is an agency subject to FOIA and must therefore conduct an adequate search using reasonable efforts for responsive records; release any disclosable records in its possession at the time of the request; and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

23. Defendant has failed to meet FOIA's statutory deadline of 20 business days to make a determination on the Request. 5 U.S.C. § 552(a)(6)(A)(i).

24. Defendant is permitted to withhold documents or parts of documents only if one of FOIA's enumerated exemptions apply.

25. No exemptions permit the withholding of the documents sought by the Request.

26. Accordingly, Plaintiff is entitled to an order compelling Defendant to produce records responsive to the Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;
2. Order Defendant to undertake an adequate search for the requested records and to provide those records to Plaintiff within 20 business days of the Court's order;
3. Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA, 5 U.S.C. § 552(a)(4)(E)(i); and
4. Grant Plaintiff such other relief as this Court deems just and proper.

Dated: New York, New York
May 19, 2025

/s/ David E. McCraw
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